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Linda Daley
Laplata County Clerk

**RESTATEMENT OF AND AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
MOUNTAIN RIVER SUBDIVISION #2**

MOUNTAIN RIVER SUBDIVISION #2 HOMEOWNERS ASSOCIATION, having its principal office at 22 Mountain River Road, Bayfield, Colorado 81122 (hereinafter referred to as "MRHOA") hereby certifies to the La Plata County Clerk and Recorder on this 29th day of September 2007 that:

FIRST: The MRHOA desires to amend and restate the Covenants, Conditions and Restrictions filed with the La Plata County Clerk and Recorder's Office, La Plata County, Colorado under Reception No. 445317 on July 30, 1980 as amended and supplemented (hereinafter referred to as "Original CC&R's");

SECOND: The provisions set forth in this Restatement of and Amendment to the Covenants, Conditions and Restrictions supersede the Original CC&R's. This Restatement of and Amendment to the Covenants, Conditions and Restrictions correctly set forth the Covenants, Conditions and Restrictions, as amended for the Mountain River Subdivision Number 2.

THIRD: The Covenants, Conditions and Restrictions for the Mountain River Subdivision are hereby amended by striking in their entirety the Covenants, Conditions and Restrictions filed in La Plata County under Reception No. 445317 on July 30, 1980 and by substituting in lieu thereof the following:

RECITALS:

- 1.1. Land owners are the record owners of certain real property located in La Plata County, State of Colorado (hereinafter referred to as "PROPERTY") described more particularly on Exhibit "A" attached hereto, made a part hereof and incorporated herein by reference, and desires to create thereon a combination residential and recreational community with open spaces, streets, roads, trails and other facilities for the benefit of said community through the granting of specific rights, privileges and easements of enjoyment which may be shared and enjoyed by all the residents and property owners thereof.
- 1.2. Land owners desire to ensure the attractiveness of the individual lots in the community facilities within the Property to prevent any further impairment thereof, to prevent nuisances, to preserve, protect and enhance the value and amenities of the Property, and to provide for the maintenance of said open spaces, streets, roads, walkways, trails and other community facilities. In order to achieve this, land owners are desirous of subjecting the Property to the covenants, conditions, restrictions, easements, charges and liens set forth herein, each and of which is and are for this benefit of the Property and each owner thereof.
- 1.3. As part of the development of the community already existing and as may be contemplated hereby, land owners intend that some open spaces, streets, roads, walkways, trails and other areas and facilities will be owned and maintained exclusively for the benefit of those persons within the

mtn River Sub No 2 HOA
c/o Glennys Godbehere, Sec
5407 N. 79th AVE

property owning a lot therein which entitles them to use the same, and such areas and facilities are hereinafter designated "General Common Properties".

- 1.4. In order to preserve, protect and enhance the values and amenities in the Property, and to ensure the residents enjoyment of specific rights, privileges, and easements in the General Common Properties, the land owners acting through the Association (as hereafter defined) have deemed it desirable to create an organization, and may hereafter create other organizations and designate other parties and entities to which shall be delegated and assigned the powers of owning, maintaining and administering all or various portions of the General Common Properties, and also administering and enforcing the covenants and restrictions herein set forth, together with collecting, disbursing and accounting for the assessments and charges herein contemplated. To this end, the DEVELOPER has caused to be incorporated under the laws of the State of Colorado as a non-profit corporation, MOUNTAIN RIVER SUBDIVISION #2 HOMEOWNERS ASSOCIATION, (hereinafter referred to as "Association"), for the purpose of exercising the aforesaid functions with respect to the General Common Properties, as hereinafter described and said Association as agent to administer and enforce these covenants.
- 1.5. Association desires to create a community by which owners of lots may do one of the following:
 - 1.5.1. Construct a single family residence thereon;
 - 1.5.2. Own a lot and place no more than two recreational vehicles thereon; or
 - 1.5.3. Own a lot as a tenant in common with another where both tenants in common have the right to place one recreational vehicle thereon and to have the exclusive use and enjoyment to a portion of said lot.
- 1.6. Nothing in this Restatement of and Amendment to the Covenants, Conditions and Restrictions is intended to or shall release the Developer or their successors or assigns from their obligations assumed under the 1980 Declaration.

NOW, THEREFORE, the Association declares that the Property is and shall be held, transferred, sold, conveyed, leased and occupied subject to the covenants, conditions, restrictions, easements, charges, liens and rights (sometimes referred to as "Covenants and Restrictions"), hereinafter set forth, all of which shall be an impediment upon and shall run with the land herein above described.

ARTICLE 1

DEFINITIONS

The following words when used in this Declaration, unless the context shall prohibit or there shall be a specific statement to the contrary, shall have the following meanings:

Section 1.1 "Property" shall mean and refer to the property which is and shall be held, transferred, conveyed, leased, and occupied subject to this Declaration, which is described more particular on Exhibit "A" attached hereto and made a part hereof.

Section 1.2 "General Common Properties" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned or in the possession of the Association.

Section 1.3 "Association" of "MRHOA" shall mean and refer to the MOUNTAIN RIVER SUBDIVISION NUMBER 2 HOMEOWNERS ASSOCIATION, a Colorado not-for-profit corporation.

Section 1.4 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any single family lot, private dwelling unit, rental unit, tenancy in common owner or a recreational vehicle lot situate within the Property which is subject to these Covenants and Restrictions, but, notwithstanding any applicable theory relating to mortgages, deeds of trust or other liens or encumbrances upon any such property, "owner" shall not include or refer to a mortgagee, beneficiary of deed of trust or lienholder, unless and until such party has acquired title pursuant to foreclosure or any applicable procedure in lieu of foreclosure.

Section 1.5 "Developer" shall mean and refer to CLEM WHEAT or DON R. WHEAT, their successors or assigns.

Section 1.6 "Member(s)" shall mean any person(s) who is a member of the Association.

Section 1.7 "Single Family Lot" shall refer to a platted lot on which there may be constructed only a single family dwelling unit, or upon which one mobile home or modular home may be placed.

Section 1.8 "Private Dwelling Unit" shall mean and refer to any completed living unit on a lot, mobile home, modular home, RV/Park Model, or a recreational vehicle.

Section 1.9 "Recreational Vehicle" means any pickup camper, motor home, travel trailer, tent trailer, or RV/Park Model, or similar mobile unit designed specifically for recreational and vacation purposes.

Section 1.10 "Common Expenses" means and includes expenses of administration, operation and the expense of maintenance, repair or replacement of the General Common Properties; expenses declared common expenses by provision of this Declaration and the By-Laws of the Association; and all sum lawfully assessed against the lots and the General Common Properties.

Section 1.11 "Gender" whenever used, unless the context shall otherwise provide, the use of any gender shall include and refer to all genders.

Section 1.12 "Recreational Vehicle Lot" means and shall refer to any lot upon which no more than two (2) recreational vehicles may be placed either by one (1) owner of the entire lot or one (1) vehicle each by the owners of an undivided interest in and to such lot as tenants-in-common.

Section 1.13 "Mobile Home" means and refers to a structure designed to be transported after fabrication and exceeding ten (10) feet in body width and thirty (30) feet in body length, and fourteen (14) feet in height. Such a structure is built on a chassis and retains the chassis on which it was built, whether

or not such structure is placed on a permanent foundation. Such a structure is suitable for human habitation on a year-round basis when provided with the required plumbing, heating and electrical facilities.

Section 1.14 "ARC" or "Architectural Review Committee" shall consist of two (2) Members appointed by the Association for one (1) year terms and one (1) Board of Directors member appointed for a one (1) year term.

Section 1.15 "By-Laws" shall mean and refer to the By-Laws of the Association which may be amended from time to time by the Board of Directors and approved by a majority of the Members voting.

Section 1.16 "CCRs", "Declaration, Covenants, Conditions and Restrictions", "Covenants and Restrictions" or "Declaration" shall mean and refer to this Restatement of and Amendment to the Declaration of Covenants, Conditions and Restrictions of Mountain River Subdivision #2 Homeowners Association, Inc." which may be amended from time to time by the Board of Directors and approved by majority of the Members voting.

Section 1.17 "County" shall mean and refer to La Plata County, Colorado.

Section 1.18 "State" shall mean and refer to the state of Colorado.

ARTICLE 2

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 2.1 Membership. Every person or entity who is a record owner of a fee or undivided interest in any single family lot, rental unit, or who has an undivided interest as a tenant in common in a designated recreational vehicle lot within the properties shall automatically be a member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a member. Any reference herein to occupancy of a single family lot shall mean occupancy of a single family dwelling unit constructed thereon or to a mobile home. Any reference herein to recreational vehicle lot shall mean occupancy as a tenant in common (if applicable) of a recreational vehicle unit placed on the lot.

Section 2.2 Voting Rights. The Association shall have one class of voting membership consisting of the Owners. The Owners shall be entitled to:

- (i) One vote for each single family lot or rental unit owned; and/or
- (ii) One vote for each recreational vehicle lot.

When more than one person holds an ownership interest or interest in any single family lot or rental unit, all such persons shall be Members, and the vote provided for herein shall be exercised as they amongst themselves determine. In no event shall more than one vote be cast with respect to any lot;

provided, however, when an Owner holding an ownership interest or an undivided one-half interest in a lot as tenant-in-common is not current in the Association dues and assessments, the other Owner holding an ownership interest or an undivided one-half interest in said lot as tenant-in-common shall be entitled to submit one vote for the entire lot, provided, however, that Owner submitting the vote is current in the Association dues and assessments.

ARTICLE 3

PROPERTY RIGHTS IN THE GENERAL COMMON PROPERTIES

Section 3.1 Members Easements and Rights of Enjoyment. Subject to the provisions hereinafter set forth in this paragraph, every Member of the Association shall have a right and easement of enjoyment in and to the General Common Properties and such easements shall be appurtenant to and shall pass with the title to every single family lot, rental unit and recreational vehicle unit within the Property which are subject to these Covenants and Restrictions.

Section 3.2 Title to the General Common Properties. The Association may, in their own discretion, retain the title, to any portion or all of the Property and Facilities, hereinafter called General Common Properties. The Developer shall be entitled to charge a reasonable fee for the supply of water and sewer facilities to the subdivision and further they may charge a reasonable fee for the maintenance and repair of the roads within the subdivision. Said fees may escalate annually, but not to exceed a ten percent (10%) increase per year. Said fees shall be specified in purchase contracts and non-payment of said fees shall become a lien against lot.

Section 3.3 Extent of Members' Rights and Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (1) The right of the Association to dedicate or transfer all or any part of the General Common Properties to any public agency, authority or utility company serving the Property, for such purposes and subject to such conditions as may be determined by the Association; provided, that no such dedication as to the purposes or the conditions thereof, shall be effective unless approved by the assent of thirty-six (36) of the total votes. A written ballot shall be sent to all Members at least thirty (30) days in advance of the canvass thereof which shall set forth the reasons for such proposed action.

- (2) A quorum required for any action authorized under Subsection (1) hereinabove shall be as follows: A return at the first canvass of ballots representing thirty-six (36) of the total votes shall constitute a quorum. If a quorum is not forthcoming at the first canvass, another canvass shall be taken subject to the notice requirements set forth in said Subsection (1), and the required quorum in any such subsequent canvass shall be eighteen (18) votes providing that no such subsequent canvass shall be taken more than sixty (60) days following the preceding canvass.

(3) The right of the Association to grant temporary easements for storage of construction materials, dirt, etc. to private Owners of lots during the construction of improvements upon any areas within the Property provided that following the completion of such construction, such Owner(s) shall forthwith proceed to remove all materials and dirt from the General Common Properties and to substantially restore the same to its condition existing before its use thereof, or to a condition acceptable to the Architectural Review Committee, all at the sole cost and expense of said lot Owner(s).

(4) The right of the Association to impose reasonable covenants and restrictions in respect to such General Common Properties in addition to those set forth herein

(5) The right of the Association to grant such easements and rights of way to such utility companies or public agencies or authorities as it shall deem necessary for the proper service and maintenance of the property.

(6) The right of the Association to enter into reciprocal agreements with other business entities, for both profit and non-profit, and with governmental entities for the rental and use of equipment and exchange of services on a fee basis or otherwise, together with the right of the Association to construct emergency facilities and to erect informational signs as the Association deems appropriate.

(7) The right of the Association to adjust or grant private access easements in addition to or in substitution for platted easement rights, if in the opinion of the Architectural Review Committee such adjustment or grant would be desirable.

(8) The right of the Association to enter into lease agreements, either as lessee or lessor, with third parties, for such purposes and subject to such conditions as they shall deem appropriate.

(9) The right of the Association to enter into contractual management agreements to provide services or to maintain the General Common Properties; provided, however, that the Association shall be fully reimbursed for its costs and expenses in providing such services.

(10) A ten (10) foot strip of land lying along Vallecito Creek is hereby designated as a perpetual maintenance easement for bank alignment and stabilization, the implementation of which shall be determined by the Association or their designee.

(11) A ten (10) foot greenbelt lying along the water edge of Vallecito Creek is hereby dedicated as a walkway and fishing easement for all Owners of lots in Mountain River Subdivision.

Section 3.4 Extension of Rights and Benefits. Every member of the Association shall have the right, subject to the rules and regulations promulgated by the Board of Directors, to extend the rights and easements of enjoyment vested in him under this section to each of his tenants and to

each member of his family who resides with him within the Property and to such other persons as may be permitted by the Association.

ARTICLE 4

COVENANTS FOR MAINTENANCE AND ASSESSMENT

Section 4.1 Creation of the Lien and Personal Obligation for Assessment. Each Owner of any Single Family Lot, rental lot and Recreational Vehicle Lot within the Property, by acceptance of a deed therefore, whether or not it shall be so expressed therein, or by acceptance of any other conveyance thereof (except a conveyance in connection with the establishment of a mortgage) shall be deemed to covenant and agree to pay to the Association (i) annual assessments or charges; (ii) special assessments for capital improvements and maintenance thereof; (iii) special assessments in connection with an Owner's failure to perform the required exterior maintenance or improvements of his property, all as hereinafter described with more particularity.

The annual assessments as hereinabove set forth shall be levied on an annual basis unless the Association determines it is in the best interest to charge assessments on a monthly basis. Special assessments shall be levied from time to time when and as determined by the Association. All the assessments described aforesaid together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made, subject to foreclosure in accordance with applicable law relating to trust deeds to public trustees in Colorado, but any such lien shall be subordinate to any valid mortgages or deeds of trust affecting such property. Each such assessment, together with such interest thereon and costs of collection thereof shall also be the personal obligation of the person or persons who are the Owners of such property at the time when the assessment falls due, and in the event that there is more than one Owner thereof, then such obligations shall be joint and several.

Section 4.2 Purpose and Use of Annual Assessments or Charges. The annual assessments or charges levied under this Paragraph as provided for in Section 4.1 above shall be exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Property, and in particular, for the acquisition, improvements and maintenance of the General Common Properties, services and facilities devoted to this purpose, including, but not limited to, the payment of taxes and insurance thereon, the repair, replacement and additions thereto, the costs of labor, equipment, materials, management and supervision thereof, for the providing of recreational facilities located on the General Common Properties, for the provision of services to the Owners of lots as determined by the Association's Board of Directors and approved by a majority of the votes of the Members who are voting, and for such other needs of the Association and Owners as may arise including a reasonable provision for contingencies and replacements.

Section 4.3 Special Assessments for Capital Improvements and Emergencies. In addition to the annual assessments described aforesaid, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying in whole or in part, the cost of construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the General Common Properties, including the necessary fixtures and personal property related thereto, or for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement, including land rehabilitation and restoration, due to any emergencies, provided that

any such assessment shall have the assent of a majority of the votes of the Members who are voting in person, by mail, or by proxy at a meeting duly called for this purpose.

Section 4.4 In the event that the Owner of any Single Family Lot, rental lot, or Recreational Vehicle Lot shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Architectural Review Committee, the Association shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the same and the exterior of the buildings and any other improvements erected thereon in the manner contemplated by the above provisions. The costs of such exterior maintenance shall thereupon be added to and become part of the annual assessments to which such parcel is subject as aforesaid.

Section 4.5 Due Date of Commencement and Determination of Annual Assessments (Dues) and Special Assessments. The annual assessments (dues) provided herein shall commence on such date as is specified in the By-Laws of the Association or in any Supplementary Declaration hereto effecting a particular parcel or property brought within the scheme of this Declaration. Assessments (dues) shall be on a full calendar year basis. Separate due dates may be established by the Association for special assessments as defined hereunder as long as made thirty (30) days in advance of such special assessments and shall be paid in a manner determined by said Association. Written notice of the annual and any special assessments shall be sent to each Owner subject thereto as soon as the amounts are determined.

Section 4.6 Effect of Non-Payment of Annual (Dues) and Special Assessments and Personal Liability of Owner. If an assessment is not paid on the date when due (being the date specified in Section 4.5 hereof) then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof, as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. In addition to the rights, it shall be the personal obligation of the then Owner to pay such assessment and such personal obligation shall continue even though the Owner's interest in the property shall be transferred.

If an annual or special assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date to the date of payment at the rate of twelve percent (12%) per annum and the Association may bring legal action against the Owner personally obligated to pay the same or to foreclose the lien against the property and there shall be added to the amount of such assessment all costs incurred by the Association in foreclosing the lien or in collecting the amount owing, including any reasonable attorneys fees and court costs.

Section 4.7 Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgages now or hereafter placed upon the property subject to assessment; provided, however, such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, and other proceeding in lieu of foreclosure. Such sale or transfer shall not release such property from liability for any assessment thereafter becoming due, nor from the lien of any subsequent assessments.

ARTICLE 5

APPROVAL OF PLANS

Section 5.1 Architectural Review Committee

(1) The Architectural Review Committee shall be deemed the "Members' representative". The vote of a majority of the ARC members shall constitute the action of the Architectural Review Committee.

(2) All building, construction and siting shall comply with all applicable codes, rules, regulations, requirements and restrictions of the State, County, and any other entity having jurisdiction. All such codes, rules, regulations, and requirements shall take precedence over the requirements of the ARC. Owners shall submit a copy of all permits and codes, rules, regulations, requirements of the State and County to the ARC along with the requirements set forth below.

(3) No improvements shall be constructed, erected, placed, altered, maintained or permitted on any lot or on the General Common Properties, nor shall any construction or excavation whatsoever be commenced or materials, equipment or construction vehicles be placed on any lot, until plans and specifications with respect thereto in manner and form satisfactory to the Architectural Review Committee showing the proposed improvements, site location of such improvements, complete building plans and material specifications, State and County or other entity having jurisdiction permits, and all exterior elevations, materials and colors, landscaping, grading, easements and utilities, and such other information as may be requested by the ARC have been submitted to and approved in writing by the Architectural Review Committee. All such materials shall be submitted in writing over the signature of the Owner of the lot or the Owner's authorized agent.

(4) Approval shall be based, among other things, on conformity and harmony of exterior design, colors and materials with neighboring structures, relation of the proposed improvements to the natural topography, grade and finished ground elevation of structure to that of neighboring structures and natural features of the Property, and conformity of the plans and specifications to the purpose and general plan and intent of these restrictions. The Architectural Review Committee shall have the right to require and approve landscaping plans. The Architectural Review Committee shall not arbitrarily or unreasonably withhold its approval of such plans and specifications.

(5) If the Architectural Review Committee fails either to approve or disapprove such plans and specifications (including resubmission of disapproved plans and specifications which have been revised) within twenty (20)

days after the same have been submitted to it (provided that all required information has been submitted), it shall be conclusively presumed that said plans and specifications have been approved, subject, however, to the restrictions contained in Article V hereof. The Architectural Review Committee shall notify the owner in writing upon receipt of all required plans and specifications and the aforesaid twenty (20) day period shall commence on the date of such notification.

(6) Neither the Architectural Review Committee or their respective successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any owner of land affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans and specifications. Every Owner or other person who submits plans to the Architectural Review Committee for approval agrees, by submission of such plans and specifications that he will not bring any action or suit against the Architectural Review Committee to recover any such damages. Approval by the Architectural Review Committee shall not be deemed to constitute compliance with the requirements of any local building codes, and it shall be the responsibility of the Owner or other person submitting plans to the Architectural Review Committee to comply therewith.

(7) The Association shall have the right and the duty to enforce these covenants and to restrain any violation hereof.

ARTICLE 6

ENFORCEMENT

Section 6.1 Abatement and Suit. The conditions, covenants and restrictions herein contained shall run with and be an impediment on the land, and be binding upon and inure to the benefit of the Association and the Owners and lessees of every lot on the Property. These covenants, conditions and reservations may be enforced as provided hereinafter by the Architectural Review Committee and as Trustee on behalf of all of the owners of single family lots, rental lots and recreational vehicle lots, and by the Association. Each Owner by acquiring an interest in the Property appoints irrevocably the declarant as his attorney-in-fact for such purposes; provided, however, that if a lot Owner notifies the Association in writing of a claimed violation of these covenants, conditions and restrictions and the Association fails to act within thirty (30) days after receipt of such notification, then, and in that event only, an Owner may separately, at his own cost and expense, enforce these covenants, conditions and restrictions as herein provided. Violation of any condition, covenant, restriction or reservation herein contained shall give the Association the right to enter upon the portion of the Property wherein said violation or breach exists and to summarily abate and remove at the expense of the Owner any structure, thing or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof, or to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these conditions, covenants, restrictions and reservations to enjoin or prevent them from doing so, to cause said violation to be remedied or to recover damages for said violation.

Section 6.2 Deemed to Constitute a Nuisance. Every violation of these covenants or any part thereof is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed therefore by law or equity against an Owner, shall be applicable against every such violation and may be exercised by the Association or lot Owners pursuant to Section 6.1 of this Article VI.

Any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the reasonable attorneys' fees of the prevailing party or parties in the amount as may be fixed by the court in such proceeding. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

The failure of the Association to enforce any of the conditions, covenants, restrictions or reservations herein contained shall in no event be deemed to be a waiver of the right to do so for subsequent violations or the right to enforce any conditions, covenants, restrictions or reservations, and the Association shall not be liable therefor.

Section 6.3 Certificate of Compliance. Upon payment of a reasonable fee not to exceed Twenty Dollars (\$20.00) and upon written request of any lot Owner, mortgagee prospective owner, lessee or prospective lessee of any property covered by these covenants, the Association shall issue an acknowledged certificate in recordable form setting forth the amounts of any unpaid assessments, if any, and setting forth generally whether or not to the best of the Association's knowledge said Owner is in violation of any of the terms and conditions of these CCRs. Said written statement shall be conclusive upon the Association in favor of the persons who rely thereon in good faith. Such statement shall be furnished by the Association within a reasonable time, but not to exceed ten (10) days from the receipt of written request for such written statement. In the event the Association fails to furnish such statement within said ten (10) days, it shall be conclusively presumed that there are no unpaid assessments relating to the property or lot as to which the request was made and that said lot is in conformance with all the terms and conditions of these covenants.

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ARTICLE 7

GENERAL PROVISIONS

Section 7.1 The Term Mortgage. The term "mortgage" when used herein shall include deeds of trust or trust deeds.

Section 7.2 Effect of Official Development Plan and Documents Filed with the County of La Plata. The Official Development Plat of MOUNTAIN RIVER SUBDIVISION and other related documents which are on record in the office of the Clerk and Recorder of the County of La Plata, or other applicable governmental agencies, has the effect and only the effect described by the Statutes of the State of Colorado, and the rules and regulations of said County. The Plat and related documents constitute part of the public controls imposed by the County upon developers, Owners, residents and users of the Subdivision and does not create, and is not intended to create, any private property or contract rights in the Owners and residents of the development except as such rights may be created expressly by separate contracts, deeds and other documents, including this Declaration. The Plat on file in the office of said

Clerk and Recorder or other applicable governmental agencies describes a plan of development which Developer believes will provide maximum benefit to the residents, Owners and the public. During an extended development program, however, various factors may intervene which may hinder the effectiveness of the Plan and which may threaten the benefits to be derived by the residents, owners and the public unless the Plan can be modified as prescribed by the applicable law. Accordingly, this Declaration is not intended to nor does it grant or create any private property or contract rights in the said Plan for the Development and such plans continue to remain subject to modification by the proper governmental authorities in accordance with the procedures set forth in the statutes, rules and regulations of the County of La Plata, State of Colorado.

Section 7.3 Duration and Amendment.

(1) This Declaration, every provision hereof and every covenant, condition, restriction and reservation contained herein shall run with and bind the land and shall continue in full force and effect for a period of fifty (50) years from the date hereof, and shall thereafter be automatically extended for successive periods of five (5) years unless otherwise terminated or modified as hereinafter provided.

(2) This Declaration and any provisions hereof, or any covenant, condition or restriction contained herein, may be terminated, extended, modified, or amended, as to the whole of the Property or any portion thereof, with the written consent of a majority of the Members voting. No amendment of these covenants, conditions or restrictions shall be effective unless the instrument evidencing such amendment has been duly recorded and unless a written notice of the proposed amendment is sent to every Member of the Association at least sixty (60) days in advance of any actions taken. Such termination, extension, modification or amendment shall be immediately effective upon recording in the office of the Clerk and Recorder of La Plata County, Colorado the proper instrument in writing, executed and acknowledged by the President and Secretary of the Board of Directors of the Association.

Section 7.4 Association Use of Community and Common Properties. The Association shall have the right to use all community and Common Properties, including streets, roads, and walkways within the Property for purposes of providing the services which they perform.

Section 7.5 Easements and Rights of Way for Service and Maintenance of Mountain River Subdivision. The Association is hereby given the right to grant within the General Common Properties such easements and rights of way to such utility companies and public or private agencies or authorities as it shall deem necessary for the proper servicing and maintenance of the Property. No approval whatever need be obtained from the person or entity which is the owner of the affected General Common Properties. The Association is also hereby given the right to grant rights-of-way over and across Common Properties to lot Owners in the event that it is necessary or desirable to adjust or relocate private access drives.

Section 7.6 Notices. Any notice required to be sent to any Member or lot Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as such Member or lot Owner on the records of the Association at the time of such mailing.

Section 7.7 No Waiver. All of the conditions, covenants, restrictions and reservations contained in this Declaration of Covenants, Conditions and Restrictions shall be construed together, but if it shall at any time be held that any one of said conditions, covenants, restrictions and reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other conditions, covenants, restrictions and reservations or any part thereof shall be affected or impaired.

Section 7.8 Benefits and Burdens. The terms and provisions contained in this Declaration shall bind and inure to the benefit of the Association, and the lot Owners located within the Property and their respective heirs, successors, personal representatives and assigns.

Section 7.9 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, all of which shall remain in full force and effect.

Section 7.10 Singular and Plural. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

Section 7.11 Order of Precedence. In the event of a conflict between these CCRs, the By-Laws, Association procedures or other documents, the CCRs shall take precedence over all other documents, followed by the By-Laws, and then the Association's procedures, and then other documents.

ARTICLE 8

LOT DISTINCTIONS

Section 8.1 Types of Lots. Any of the lots within the Property may be sold as "Single Family Lots", as defined in Article I, Section 1.7, or they may be sold as "Recreational Vehicle Lots", as defined in Article I, Section 1.12. A purchaser may buy a total lot or an undivided one-half (1/2) interest in a lot. If a purchaser owns the entire lot he may use that lot for either a Single Family Lot or for a Recreational Vehicle Lot.

Section 8.2 Single Family Lots. Any of the lots within the Property which are sold as Single Family Lots, as defined in Article I, Section 1.7 of this Declaration shall be for single family residential purposes only. No building or structure intended for or adapted to business purposes or multi-family dwelling purposes shall be erected, placed, permitted or maintained on such lots, or any part thereof, and shall have the following general restrictions:

(i) Any home constructed or modular home must have a minimum of 784 square feet of living space, excluding garage and porches and plans and specifications of which must be approved by the Architectural Review Committee as set forth in Article V of this Declaration.

(i) Mobile and modular homes shall not be more than two (2) years old from the date of manufacture.

(i) Single-wide mobile homes shall not be more than two (2) years old from the date of manufacture.

Section 8.3 Recreational Vehicle Lots. Any of the lots within the Property which are sold as Recreational Vehicle Lots as defined in Article I, Section 1.12 of this Declaration may be purchased as a total lot or an undivided one-half (1/2) interest in the lot may be purchased.

(i) If the lot is purchased in its entirety the Owner thereof may use that lot for either a Single Family Lot or for a Recreational Vehicle Lot, at his sole option. If he chooses to use said lot for a Recreational Vehicle Lot, he may place a total of two (2) recreational vehicles thereon. Furthermore, said purchaser may sell either his entire interest to said lot or he may convey an undivided one-half interest in said lot to a third party.

(i) In the event an Owner purchases an undivided one-half interest in and to a lot or subsequently conveys an undivided one-half interest (only allowed when he is the owner of the entire lot), he shall be allowed to place one (1) Recreational Vehicle upon his undivided one-half interest, while his tenant in common will be allowed to place one (1) Recreational Vehicle on his respective one-half interest. It is the intent of this Article VIII, Section 8.3 to allow a Recreational Vehicle Lot to be used by no more than two (2) Owner interests, each of which is allowed to place one (1) Recreational Vehicle on the lot. No such lot may, at any time house more than two (2) such vehicles.

(ii) If separate ownership interests are created in a lot to be used for Recreational Vehicles, the parties to such interests shall enter into a written agreement to be recorded providing for, as a minimum, the following:

- (a) Which one-half of the lot will be exclusively used by which tenant.
- (b) Agreements as to the payments of assessments, both general and special, and taxes levied against the lot.
- (c) Agreements as to the conveying, leasing, renting, sale or transfer of the tenant in common's interest in the lot.
- (d) Provisions as to access to the roads, water and sewer facilities across the co-tenants portion of his exclusively used lot, if applicable.
- (e) Any other matter agreed upon between the co-tenants as to the use and enjoyment of their respective interest in the lot.

Section 8.4 Restricted Uses Both on "Single Family Lots" and "Recreational Vehicle Lots".

(i) No noxious or offensive activities shall be carried on at any lot, nor shall anything be done or placed therein which may be or become a nuisance or cause unreasonable embarrassment, disturbance or annoyance to the other Owners in the enjoyment of their lots or the General Common Properties.

(ii) Single Family Lots and such lots having thereon a single family residence, are for single family residential purposes only. No building or structure intended for or adapted to business purposes or multi-family dwelling purposes shall be erected, placed, permitted or maintained on such lots, or any part thereof.

(iii) Recreational Vehicle Lots are for recreational vehicle purposes only. No building or structure or recreational vehicle intended for or adapted to business purposes or multi-family dwelling purposes shall be erected, placed, permitted or maintained on such lots, or any part thereof.

(i) No gas or oil drilling or the extraction thereof or mining operation shall be permitted on these lots. No lot Owner shall be permitted to drill a well intended for the extraction of water from the ground, nor construct a septic or sewage disposal system on any lot. All lots are to be provided with central water and sewer taps.

(ii) No lot shall be used other than for residential purposes. A maximum of one residential building shall be permitted on a Single Family Lot and a maximum of two Recreational Vehicles will be permitted on any lots designated as Recreational Vehicle Lots.

(iii) In order to preserve the natural quality and esthetic appearance of the existing geographic areas within the Property, all property lines shall be kept free and open one to another and no fence or plantings simulating fences shall be permitted on any lot or lot lines.

(iv) No exterior antennas shall be permitted except as approved by the Architectural Review Committee, and in any event, such antennas shall be placed in such a manner and located as to be least visible from neighboring lots and General Common Properties or roads.

(v) No elevated tanks or appurtenances of any kind, excluding propane tanks, shall be erected, placed or permitted upon any part of any lot. The restrictions contained in this subsection may be varied or waived only with the prior approval, in writing, of the Architectural Review Committee.

(vi) All electric, television, telephone, radio or other utility lines shall be placed underground when extended from the lot line to any dwelling or other improvement on the lot, and all lots shall have utility easements ten (10) feet on either side of the front, side and back lines of such lot, for the purpose of constructing, installing, maintaining, repairing and replacing utilities of all kinds, including, water, gas, electricity, sewer, telephone, television, radio and other utility lines.

(vii) No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of units or other improvements located thereon or essential to the function of community services shall be placed or used on any lot or on the General Common Properties.

(viii) No permanent or exterior lighting of any sort shall be installed or maintained on any dwelling or other improvement on a lot without first obtaining the approval of the Architectural Review Committee

(ix) Living trees shall not be cut or tree roots disturbed, by trenching on a lot without prior approval of the Architectural Review Committee.

(x) In no event shall any structure on any lot exceed a height of twenty-five (25) feet unless, for good cause shown, such height may be varied or waived by the Architectural Review Committee.

(xi) No domestic animals totaling more than two (2) generally recognized house or yard pets shall be maintained on any lot. If an Owner chooses to keep house or yard pets, said Owner shall at all times have them under his or her control, whether within the Owner's lot, his exclusive undivided interest in the lot, or in any other location within the Property. Animals shall not be permitted to roam at will, and at the option of the Association, steps may be taken to control any animals not under the immediate control of their owners, including the right to impound animals not under such control and charged substantial fees to their owner for their return. The Association shall have the right to adopt further rules and regulations to enforce this provision. No domestic animals of any kind may be kept for commercial purposes.

(xii) No horses shall be kept or otherwise maintained within lots. Further, no horses shall be ridden or otherwise permitted in any of the General Common Properties

(xiii) If lot Owners landscape, plans for which must be reviewed and approved by the Architectural Review Committee, lot Owners are encouraged to use indigenous species in such landscaping.

(xiv) No lot shall be used or maintained as a dumping ground for rubbish. No garbage or trash or other waste shall be placed anywhere other than in covered sanitary containers which shall be maintained in good and clean condition. Containers shall be made from material which will minimize noise during handling. No waste shall be burned upon any lot. All garbage and trash collection and disposal shall be in strict compliance with the rules of the Association.

(xv) No exterior fires shall be permitted except for barbecue fires and camp fires contained within receptacles designed for that use, e.g. barbeque, fire pit, outdoor fireplace, etc.. No coal or other type of fuel which gives off smoke, except wood and charcoal shall be used for heating, cooking, or any other purpose within a lot unless approved by the Architectural Review Committee.

(xvi) A lot and all improvements thereon shall be maintained at all times by the Owner in good condition and repair. The Owner shall cause all dwellings and other improvements to be refinished, resurfaced or repaired periodically as effects of damage, deterioration or weather become apparent. Appearance, color, type of painting or stain or other exterior conditions shall not be changed without prior approval of the Architectural Review Committee. All appropriate repairs and replacements shall be made as often as necessary. Unsightly conditions shall constitute a nuisance as defined in these CCRs.

(xvii) Each lot Owner, or the Owner of an exclusive area in a lot with divided ownership interests, shall maintain the landscaping as approved by the Architectural Review Committee upon his lot in good condition.

(xviii) All dwellings near the bank of Vallecito Creek shall be sited in accordance with the codes, rules, regulations and restrictions of the State, County and any other entity having jurisdiction.

(xix) No tin roofs shall be permitted on any of the structures placed on any lot except that colored tin with a permanent baked-on enamel color will be permitted.

(xx) No hanging of laundry will be permitted outside any dwelling unit.

(xxi) No fencing shall be allowed.

(xxii) A domestic animal run shall be permitted subject to the approval of the ARC. A domestic animal run shall be set back ten (10) feet from all property lines, shall not be higher than six (6) feet, and shall not be greater than 72 square feet in area.

(xxiii) No on-street parking of vehicles will be allowed. Two (2) spaces per lot should be provided for each space being 10' x 20'. Tandem parking will be allowed.

Material: Base should either be gravel, asphalt or concrete.

Location: Any accessible location on the lot, but cutting of trees is discouraged.

(xxvii) All shed and storage unit sizes shall be subject to the codes, rules, regulations and restrictions of the County.

(xxviii) No steel shipping containers shall be allowed.

(xxix) The codes, rules, regulations and restrictions of the County shall be applicable to any structure to be located on any utility easement. The Owner shall provide the applicable code, rule, regulation, restriction of the County to the ARC prior to locating any structure on a utility easement.

Section 8.5 Automobiles, Boat and Camper Parking.

(i) Trucks, trailers, mobile homes, truck campers, boat and commercial vehicles shall not be kept, placed or maintained upon any road, or on the General Common Properties. Any such trucks, trailers, mobile homes, truck campers, boats and commercial vehicles shall be parked upon the lot of its owner.

(ii) No trailer, vehicle or boat shall be constructed, reconstructed, or repaired upon any lot in such a manner that it becomes a nuisance, nor shall unregistered vehicles be stored upon any lot.

Section 8.6 Signs

(i) No signs whatsoever shall be permitted within any lot, with the exception of those listed below:

- (a) Signs required by legal proceedings;
- (b) Residential identification signs constructed of materials which are compatible with the architecture of the area;
- (c) Signs used by contractors, subcontractors and tradesmen may be erected during the authorized time of construction;
- (d) For sale signs may be erected upon a lot.

Section 8.7 Butane, Propane, Fuel Oil and Natural Gas. Unless otherwise permitted by the Architectural Review Committee, if, at any time, natural gas lines are extended to a point approximate to a lot and natural gas service thereof is provided to a dwelling on the lot, including Recreational Vehicle Lots, the owner of such dwelling or recreational vehicle lot shall discontinue use of liquefied propane, butane gas or fuel oil and shall connect to and utilize the aforesaid natural gas distribution service.

Section 8.8 Convenience Center Site. Lot 22, along with the area designated as park site on the official plat, is hereby reserved for a clubhouse and/or convenience center.

ARTICLE 9

GENERAL COMMON PROPERTIES

Section 9.1 No noxious or offensive activities shall be carried on at any time on the General Common Properties, nor shall anything be done or placed therein which may be or become a nuisance or cause unreasonable embarrassment, disturbance or annoyance to owners in the enjoyment of their lots or in the General Common Properties.

Section 9.2 All uses of General Common Properties shall be subject to rules and regulations of the Association as promulgated and revised by the directors thereof from time to time.

Section 9.3 No improvement, excavation or other alteration shall be made so as to alter the General Common Properties from their natural or existing state.

Section 9.4 Areas within the General Common Properties to be utilized for recreational facilities may be so developed by the Association, subject only to prior approval of the Architectural Review Committee.

Section 9.5 Uses of the undeveloped and unimproved General Common Properties shall be limited to those activities which do not materially injure or scar the General Common Properties or the

vegetation thereon, substantially increase the cost of maintenance thereof, or cause unreasonable embarrassment, disturbance or annoyance to owners in their enjoyment of their lots or the General Common Properties unless sanctioned or approved by the Architectural Review Committee.

Section 9.6 There shall be no camping or picnicking in the General Common Properties except in those areas specifically designated by the Association for that purpose.

Section 9.7 There shall be no fires started or maintained in the General Common Properties, except fires started by the Association or its employees incidental to the maintenance of the General Common Properties and except for cooking and campfires in those areas designated for that use and in recreational facilities in which the same shall expressly be permitted.

Section 9.8 No domestic animals shall be permitted on General Common Properties except generally recognized house or yard pets accompanied by or under the control of their owners.

Section 9.9 The use of snowmobiles, motorcycles or other motorized vehicles off the roadways is expressly prohibited within the General Common Properties except as required for emergency and maintenance purposes.

Section 9.10 The use of bicycles shall be limited to the roads and bike trails provided for their use.

ARTICLE 10

SEVERABILITY

Section 10.1 Invalidation of any one (1) of these Covenants, Conditions and Restrictions herein set forth by judgment or court order shall in no way affect any of the other provisions hereof.

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1 IN WITNESS WHEREOF, the Association President and Secretary have executed this
instrument on the day and year first above written.

2 ASSOCIATION:

3
4 Jerry Williams, President

5 *Jerry Williams*

6
7 Glennys Godbehere, Secretary

8 *Glennys Godbehere*

9 STATE OF COLORADO)
10) ss.
11 COUNTY OF LA PLATA)

12 Subscribed and sworn to before me this 29 day of September, 2007, by Jerry
13 Williams and Glennys Godbehere. WITNESS my hand and official seal. My
14 commission expires 9/1/08.

15 **GAIL H RUSH**
16 **NOTARY PUBLIC**
17 **STATE OF COLORADO**

18 My Commission Expires: 9/1/08

19 *Gail H Rush*
20 Notary Public

21 Dated this 29 day of September
22 2007